

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

HART ENTERPRISES, INC.,

Plaintiff

v.

CHESHIRE SANITATION, INC., et al.,

Defendants

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Docket No. 98-416-P-H

***RECOMMENDED DECISION ON PLAINTIFF'S MOTION
TO AMEND COMPLAINT AND FOR REMAND***

The plaintiff has moved for leave to amend its complaint to add two defendants, United Waste Systems of Maine, Inc., a Delaware corporation, and Waste Management of Maine, Inc., a Maine corporation. This action was removed to this court by the present defendants based on asserted jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1332(a)(1) (diversity of citizenship). Notice of Removal (Docket No. 1) at 2. The only claim in the complaint upon which federal question jurisdiction could attach has since been dismissed. Docket Nos. 10 & 15. The only remaining basis for jurisdiction in this court is therefore diversity of citizenship of the parties. The addition of Waste Management of Maine, Inc. as a defendant would destroy diversity and require remand of this action to the Maine Superior Court (Androscoggin County). 28 U.S.C. § 1447(e). Because remand would be dispositive of this action in federal court, my decision is a recommended one. *See* 28 U.S.C. § 636(b).

Based on the submissions of the parties, and including the statements of counsel made during a telephone conference of counsel held today concerning this motion, *see* Report of Conference of

Counsel (Docket No. 30), I conclude that, while the two corporations the plaintiff seeks to add as defendants to this action may not be indispensable parties as that term is defined in Fed. R. Civ. P. 19, it is likely that the accounts receivable that are the subject of this action are now within the possession and control of one or both of these corporations, and that their presence as parties in this action would clearly be appropriate. *See generally Casas Office Mach., Inc. v. Mita Copystar Am., Inc.*, 42 F.3d 668, 673-75 (1st Cir. 1994). This action has not proceeded so far in this court that remand to state court would be a wasteful use of judicial resources. Indeed, the possibility of remand could only have arisen after this court's March 18, 1999 ruling on the motion to dismiss the only federal-law claim in the complaint. *See Irizarry v. Marine Powers Int'l*, 153 F.R.D. 12, 14 (D.P.R. 1994) (setting out factors to be considered by court in ruling on motion to join parties under section 1447(e)).

Accordingly, I recommend that the plaintiff's motion to amend be **GRANTED** and that this action be **REMANDED** to the Maine Superior Court (Androscoggin County).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 14th day of April, 1999.

David M. Cohen
United States Magistrate Judge